

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NICOLE BROCKMOLE and LAUREN  
BAIR, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

EZ FESTIVALS LLC, AVANT GARDNER  
LLC, MADE EVENT LLC, and JOHN DOES  
NO. 1-10,

Defendants.

Civil Action No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Nicole Brockmole and Lauren Bair, individually and as class representatives,  
sue Defendants EZ Festivals LLC, Avant Gardner LLC and Made Event LLC and state:

**NATURE OF THE ACTION**

1. Plaintiffs bring this lawsuit as a Rule 23 class action on behalf of all affected patrons who paid for ticket(s) for access or entry to the “Electric Zoo New York Music Festival” (“EZNY” or “Electric Zoo”) and were not granted access to EZNY on Friday, September 1, 2023 and/or Sunday, September 3, 2023.

2. This case arises out of a nightmare endured by thousands of electronic music fans who attended, or tried to attend, EZNY on Randall’s Island, New York over Labor Day Weekend 2023.

3. To the shock and dismay of attendees, many of whom traveled thousands of miles or across the country to attend, EZNY abruptly canceled its first day on Friday, September 1, 2023 with little to no notice to ticket holders after they arrived in New York City.

4. The owners, operators, organizers and promoters of EZNY cancelled the first day of the festival contrary to the terms of the ticket contract and without notice and without a reasonable explanation.

5. The owners, operators, organizers and promoters of EZNY are also the owners, operators, organizers and promoters of the venues for the heavily promoted EZNY “after parties,” including but not limited to the Brooklyn Mirage, a notorious Brooklyn venue known for sold out shows, expensive drinks and tickets, and intentionally delayed their cancellation announcement to continue to sell after party tickets.

6. As reported by online media outlet Gothamist, “[t]he event’s organizers are the same people behind Avant Gardner, an 8,000-person music complex in East Williamsburg that has a history of overselling shows by as much as 33%, according to reports from an independent monitor obtained by Gothamist.”<sup>1</sup>

7. Adding insult to injury, two days later, Defendants again violated the terms of the ticket contract by denying entry to approximately 7000 ticket buyers because, it was reported, Defendants sold at least 7,000 more tickets to Sunday’s show than the capacity of the venue.

8. While eager and excited music fans were prepared for what was supposed to be a truly special musical experience, they were met only with chaos, cancellations, stampedes, and rejection at the gate despite having and paying for valid Sunday tickets.

9. Outrage spread quickly on social media and throughout traditional news outlets, with the New York Post, the New York Daily News, Gothamist, and other news outlets describing the dangerous events unfolding. Social media users dubbed the festival “Fyre Festival 2.0.”

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<sup>1</sup> See <https://gothamist.com/news/avant-gardner-owners-were-behind-electric-zoo-fiasco-mayor-adams-promises-response>

10. New York City Mayor Eric Adams said the city will take action against Electric Zoo Festival organizers.<sup>2</sup>

11. During a September 5, 2023 NYPD briefing, Mayor Adams said “[i]t’s unfortunate that the organizers wanted to turn our city into a zoo, and we were not going to allow that to happen. And we will be dealing with them in the next few days based on their behavior and actions.”<sup>3</sup>

### **PARTIES**

12. Plaintiff Nicole Brockmole is an adult residing in Cary, North Carolina who purchased tickets for Electric Zoo for Friday, September 1, 2023 and Sunday, September 3, 2023 and attempted to attend both shows but due to Defendants actions did not.

13. Plaintiff Lauren Bair is an adult residing in Fountain Hills, Arizona who purchased tickets for Electric Zoo for Friday, September 1, 2023 but could not because the show was cancelled.

14. Defendant Avant Gardner, LLC is a New York Limited Liability Company located at 140 Stewart Avenue, Brooklyn, NY, United States, 11237 and is an owner, operator, organizer, promoter of Electric Zoo Music Festival and/or otherwise responsible or liable for the allegations herein.

15. Defendant Made Event LLC is a New York Limited Liability Company located at 140 Stewart Avenue, Brooklyn, NY, United States, 11237 and is an owner, operator, organizer,

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<sup>2</sup> See <https://www.cbsnews.com/newyork/news/mayor-eric-adams-says-city-will-take-action-against-electric-zoo-festival-organizers/>

<sup>3</sup> See <https://gothamist.com/news/avant-gardner-owners-were-behind-electric-zoo-fiasco-mayor-adams-promises-response>

promoter of Electric Zoo Music Festival and/or otherwise responsible or liable for the allegations herein.

16. Defendant EZ Festivals LLC is a New York Limited Liability Company located at 140 Stewart Avenue, Brooklyn, NY, United States, 11237 and is an owner, operator, organizer, promoter of Electric Zoo Music Festival and/or otherwise responsible or liable for the allegations herein.

17. Avant Gardner acquired Made Event and Electric Zoo from LiveStyle for \$15,000,000 in June 2022.

18. Defendants Does 1-10 are person/parties responsible for the cancellation of Friday's shows and/or the oversold tickets held by class members, and/or who aided and abetted the named Defendants' wrongful conduct.

19. Under Rule 15(c) of the Federal Rules of Civil Procedure, the true names and capacities of the Defendants, John Does 1-20, inclusive, whether individual or otherwise, are unknown to the Plaintiffs, who, therefore, sues said Defendants by such fictitious names and will further seek leave of this Honorable Court to amend this Complaint to reflect their true names and capacities when the same are ascertained.

20. Plaintiffs are informed and believe, and based thereon allege, that at all times mentioned herein, each of the Defendants was the agent, servant, employee, coventurer, and co-conspirator of each of the remaining Defendants, and was at all times herein mentioned acting within the course, scope, purpose, consent, knowledge, ratification, and authorization of and for such agency, employment, joint venture and conspiracy.

21. Plaintiffs allege upon information and belief that each of the Defendants designated as a Doe are responsible in some manner and liable herein to the Plaintiffs by reason

of negligence, wanton and reckless misconduct, and/or in some other manner as alleged hereinafter by this Complaint, and by such wrongful conduct each of the Defendants proximately caused the injury and damage occasioned to the Plaintiffs herein.

### **JURISDICTION AND VENUE**

22. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum of \$5,000,000 exclusive of interest and costs, there are more than 100 putative class members, and minimal diversity exists because many putative class members are citizens of a different state than Defendant.

23. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because this is the judicial district in which a substantial part of the events giving rise to the claims asserted herein occurred.

24. This Court has personal jurisdiction over this matter because Defendants conducted business operations in this District.

### **GENERAL ALLEGATIONS**

25. For more than a decade, Electric Zoo has been a Labor Day weekend tradition in New York City. It is one of the City’s biggest music festivals touting to attract the top talent in the electronic Dance Music (“EDM”) genre year after year.

26. The Electric Zoo Music Festival occupies the fields of NYC’s Randall’s Park, to set for 3 days of EDM music for fans from all over the world and remains the main EDM event in NYC.

27. Like years past, Electric Zoo was scheduled to host an estimated 40,000 people this year on Randall's Island, New York over Labor Day Weekend between Friday, September 1, 2023 and Sunday, September 3, 2023.

28. This case arises out of, among other things, the planning, representations, and subsequent ticket sales for Electric Zoo after Electric Zoo owners, operators, organizers and/or promoters announced it would cancel the first day of the festival on Friday, September 1, 2023.

29. Shortly before Electric Zoo was scheduled to begin its first day, and after many, if not all, concert goers arrived in New York City to attend, Electric Zoo promoters and/or organizers wrote in an Instagram post Friday morning: "The global supply chain disruptions have impacted industries worldwide, and, sadly, our beloved festival has not been immune. These unexpected delays have prevented us from completing the construction of the main stage in time for Day 1."

30. The post stated:<sup>4</sup>



Dear Electric Zoo Family,

It is with a broken heart that we deeply regret to inform you that, despite our tireless efforts and round-the-clock commitment, we have made the painful decision to cancel the first day of Electric Zoo.

This year has presented unparalleled challenges for everyone. The global supply chain disruptions have impacted industries worldwide, and, sadly, our beloved festival has not

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<sup>4</sup> See [https://www.instagram.com/p/Cwp4ggLu\\_rL/](https://www.instagram.com/p/Cwp4ggLu_rL/)

been immune. These unexpected delays have prevented us from completing the construction of the main stage in time for Day 1.

We know how much today meant to all of you, and seeing your excitement made it all the more special for us. Sharing this tough news is honestly heartbreaking. We feel the weight of the disappointment and frustration, and we're so sorry to let our Electric Zoo family down.

We will be providing a full refund for your Friday ticket. For those who hold multiple-day tickets, you will receive credit for one of the days. Similarly, all Friday ferry and bus ticket holders will receive a full refund, and those with multiple-day transport tickets will receive a refund equivalent to the amount of one day. We will ensure this process is as seamless and prompt as possible.

On a brighter note, Saturday and Sunday are set to be truly magical. Starting from 1pm on both days, we look forward to uniting with all of you to celebrate life and music, and dance through the sunset with the iconic backdrop of the New York skyline, right in the heart of New York City. Let's come together, stronger than before, to create moments that will be etched in our memories forever.

While words cannot fully express the depth of our remorse about Day 1, please know that this decision was not made lightly. Your safety and experience are always paramount, and we did not want to compromise the quality and integrity of the event you truly deserve.

We ask for your forgiveness and understanding during this challenging time. We are profoundly sorry for all the inconvenience and disappointment this will cause. Your unwavering support has always been the backbone of Electric Zoo, and we pledge to make the remaining days of the festival an unforgettable experience.

31. But certain insiders said that explanation was bogus: "It was total bulls--t. All the vendors are in the US, and in the Tri-State area. They started planning very late in the game and were not reserving trucks, equipment, inventory, putting stages together," the source said.<sup>5</sup>

32. In addition to Friday's cancellation, and perhaps more egregiously, things turned worse for Electric Zoo fans on Sunday when they were left to languish in heatwave for hours after being greeted by never ending lines to enter the festival and eventually denied entry because the venue was oversold and overcrowded.

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<sup>5</sup> See <https://pagesix.com/2023/09/09/brooklyn-mirages-very-late-planning-to-blame-for-electic-zoo-chaos/>

33. “Electric Zoo oversold tickets by 7,000 people, which led to the festival prohibiting attendees from entering on Sunday, according to the NYPD. The decision to prohibit entry led to chaos and people storming the gates to get into the festival, which is held on Randalls Island.”<sup>6</sup>

34. In a statement on social media, Electric Zoo organizers and/or public relations shared:

*It is with deep regret that we need to inform you that due to the challenges caused by Friday cancelation, we have reached our venue’s capacity earlier than anticipated for today, Sunday. For the safety and well-being of everyone on site, we will not be admitting any additional attendees today.*

*If you are on your way or were planning to come later, we kindly ask that you refrain from coming to the festival site.*

*Your safety and festival experience remain our top priorities. We deeply apologize for this inconvenience and hope you understand that this decision was made with everyone’s best interest in mind. Refund details are to follow.*

*Thank you for your continued love, patience, and understanding. We promise to make it up to you.*

***ELECTRIC ZOO FESTIVAL***

35. One news outlet stated, “[t]he festival has a 42,500 person capacity, and the NYPD estimated that organizers oversold it by 7000 tickets on Sunday, leading to gates being closed to ticketholders starting at 6:30 PM. A large group of people rushed the gates not long after, as shown in footage posted to social media.”<sup>7</sup>

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<sup>6</sup> See <https://pix11.com/news/local-news/electric-zoo-festival-overbooked-by-7000-people-resulting-in-chaos/>

<sup>7</sup> See <https://www.brooklynvegan.com/electric-zoo-oversold-by-7000-tickets-nypd-says-eric-adams-addresses-chaos>



36. “Every single staff that is at EZoo is mad at EZoo,” a security guard tells Rolling Stone. “Why would you oversell the tickets?” The EZoo app notified guests at 7:40 p.m. that due to Friday’s cancellation the venue had reached capacity earlier than anticipated.<sup>8</sup>

37. One attendee commented: “We felt like we were cattle.”<sup>9</sup>

38. Class members have yet to receive refunds for canceling the September 1, 2023 day of Electric Zoo and/or for denying entry or refusing access to the September 3, 2023 day of Electric Zoo despite those class members collectively incurring millions of dollars in costs and expenses.

### **CLASS ACTION ALLEGATIONS**

39. This action is brought, and may properly be maintained, as a class action under Fed. R. Civ. P. Rule 23 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. The class includes all persons who purchased tickets to EZNY Friday and/or Sunday shows but did not attend either show.

40. This action satisfies the predominance, typicality, numerosity, superiority, and adequacy requirements of these provisions.

- a. Numerosity: The plaintiff class is so numerous that the individual joinder of all members is impractical under the circumstances of this case. While the exact number of Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believes, and based thereon alleges, that over ten-thousand (10,000) persons purchased tickets for, and/or attended, Electric Zoo.

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<sup>8</sup> See <https://www.rollingstone.com/music/music-news/electric-zoo-reaches-capacity-gate-rush-ticket-holders-turned-away-1234817774/>

<sup>9</sup> *Id.*

- b. Commonality: Common questions of law and fact exist as to all members of the plaintiff class and predominate over any questions that affect only individual members of the class. The common questions of law and fact include, but are not limited to:
  - i. Whether Defendants made false representations about Electric Zoo;
  - ii. If so, whether Defendants knew they were false or were reckless as to their veracity at the time they were made;
  - iii. Whether Defendants negligently misrepresented various facts regarding Electric Zoo; and
  - iv. Whether Defendants breached any implied or explicit contractual obligations to ticket buyers and to attendees of Electric Zoo.
- c. Typicality: Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs and the members of the class sustained damages arising out of Defendants' wrongful and fraudulent conduct as alleged herein.
- d. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the class. Plaintiffs have no interest that are adverse to the interests of the other Class Members.
- e. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of the class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense that numerous individual actions would engender. The expenses and

burdens of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Class litigation would also prevent the potential for inconsistent or contradictory judgments.

- f. Public Policy Considerations: When a company or individual engages in fraudulent and predatory conduct with large swaths of consumers, it is often difficult or impossible for the vast majority of those consumers to bring individual actions against the offending party. Many consumers are either unaware that redress is available, or unable to obtain counsel to obtain that redress for financial or other reasons. Class actions provide the class members who are not named in the complaint with a vehicle to achieve vindication of their rights. The members of the class are so numerous that the joinder of all members would be impractical and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the court. There is a well-defined community of interest in the questions of law or fact affecting the Plaintiff Class in that the legal questions of fraud, breach contract, and other causes of action, are common to the Class Members. The factual questions relating to Defendants' wrongful conduct and their ill-gotten gains are also common to the Class Members.

41. Plaintiffs' claims are typical of the claims of the members of the Class, as Plaintiffs and the other members of the Class sustained damages arising out of the same wrongful conduct by Defendants as alleged herein.

42. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

43. A class action is superior to all other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, as the damages suffered by the individual class members may be relatively small, the expense and burden of individual litigation make it impracticable for members of the Class to seek redress individually for the wrong done to them. There will be no difficulty in the management of this action as a class.

### **COUNT I**

#### **FRAUD – INTENTIONAL MISREPRESENTATION RELIANCE (By Plaintiff Individually and On Behalf of All Class Members Against All Defendants)**

44. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

45. As stated above, all Defendants falsely represented that they would present shows on each of the three festival days and that ticket holders were entitled to enter the grounds and see the shows.

46. Defendants have, through various social media outlets, promoted this event vigorously. As the organizers and sponsors of this event, Defendants knew that the representations were false; or at a minimum, Defendants made the representation with reckless disregard for the truth.

47. These representations by Defendants were clearly made to promote the event and increase the number of attendees to the event.

48. Based on the representations by Defendants, Plaintiffs purchased their tickets and attempted to attend the event.

## **COUNT II**

### **NEGLIGENT MISREPRESENTATION RELIANCE (By Plaintiffs Individually and On Behalf of All Class Members Against All Defendants)**

49. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

50. As stated above, Defendants falsely represented that they would present shows on each of the three festival days and that ticket holders were entitled to enter the grounds and see the shows.

51. Defendants have, through various social media outlets, promoted this event vigorously. Although Defendants may have honestly believed that these representations were true, based on the lack of preparation of the event, Defendants had no reasonable grounds for believing the representations were true when they made it.

## **COUNT III**

### **BREACH OF CONTRACT (By Plaintiffs Individually and On Behalf of All Class Members Against All Defendants)**

52. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein

53. Plaintiffs and all other members of the class entered into valid and enforceable contract with Defendants for concerts that were promised to be held on Friday, September 1, 2023 and/or Sunday September 3, 2023.

54. Plaintiffs and all other members of the class fully performed under the contracts by paying valuable consideration to Defendants.

55. Defendants breached the contracts by cancelling the Friday show on the date of the concert, hours before it was initially scheduled to begin and by barring Plaintiffs and other class members from entering the Sunday show.

56. As a direct and proximate result of said breach, Plaintiffs and all other members of the class have suffered actual and consequential damages.

#### **COUNT IV**

##### **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (By Plaintiffs Individually and On Behalf of All Class Members Against All Defendants)**

57. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

58. Plaintiffs entered into a contract with Defendants to provide a music festival experience in exchange for money. Plaintiffs provided payment in consideration for Defendants' promise to provide accommodations, vendors, and A-level musical talent.

59. As shown above, Defendants engaged in disruptive behavior which clearly interfered with Plaintiffs right to receive the benefits of the contract.

#### **COUNT V**

##### **UNJUST ENRICHMENT (By Plaintiffs Individually and On Behalf of All Class Members Against All Defendants)**

60. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

61. Defendants have all benefitted financially as a result of the ticket sales and revenue generated by the tickets Plaintiffs and class members purchased for the September 1,

2023 Electric Zoo concert and September 3, 2023 Electric Zoo concert but who were not allowed to the Friday or Sunday shows.

62. Defendants have not paid or reimbursed Plaintiffs or the class for these purchases.

63. Consequently, the Defendants have been unjustly enriched at the expense of Plaintiffs and, in good conscience and equity, are liable to Plaintiffs.

### **COUNT VI**

#### **VIOLATION OF N.Y. GBL § 349**

#### **(By Plaintiffs Individually and On Behalf of All Class Members Against All Defendants)**

64. Plaintiffs repeat reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

65. Plaintiffs and the other members of the Class have been injured and suffered damages by violations of section 349(a) of New York General Business Law (the “GBL”), which states:

Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

66. Defendants engaged in acts and practices in the State of New York that were deceptive or misleading in a material way, and that injured Plaintiffs and the other members of the Class. Such acts and practices were likely to mislead a reasonable consumer acting reasonably under the circumstances existing at the time.

67. Defendants’ deceptive acts include representing or omitting that (1) Electric Zoo would take place as scheduled on Friday, September 1, 2023; (2) Electric Zoo had all the necessary equipment, materials, supplies, suppliers, vendors, labor and personnel to handle all the maintenance, construction, and build out for Electric Zoo’s design and infrastructure like the

stages, seating, bathrooms, and concessions, (3) Electric Zoo would pass all inspections and tests done by the City and other agencies or regulators; (4) Electric Zoo would receive all the necessary permits and approvals by government agencies and other authorities to take place as scheduled; (5) Electric Zoo would not be oversold or exceed capacity; (6) Electric Zoo capacity and crowd control would not violate, and comply at all times with, New York City fire codes and other capacity and safety rules and regulations applicable to New York concerts or festivals; (7) that everyone with a valid ticket would be able to attend and/or access Electric Zoo; and (8) EZNY had oversold their shows.

68. Plaintiffs and the other members of the Class have been damaged by Defendants' violations of section 349 of the GBL, for which they seek recovery of the actual, or, alternatively, statutory, damages they suffered because of Defendants' willful and wrongful violations of section 349, in an amount to be determined at trial.

69. Plaintiffs and the other members of the Class seek treble damages and an award of reasonable attorney's fees pursuant to section 349(h) of the GBL.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on their own behalf, and on behalf of the Class Members, as well as the general public, pray for judgment as follows:

#### **CLASS CERTIFICATION:**

1. For an order certifying the proposed Class;
2. That Plaintiffs be appointed as the Representatives of the Class; and
3. That counsel for Plaintiffs be appointed as Class Counsel.



**AS TO ALL CAUSES OF ACTION:**

1. For all actual, consequential, and incidental losses and damages, according to proof;
2. For punitive damages, where permitted by law;
3. For attorneys' fees, where permitted by law;
4. For costs and suit herein incurred;
5. Awarding Plaintiffs and the other members of the Class treble damages for Defendants' violations of GBL § 349; and
6. For such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury.

Dated: September 13, 2023

Respectfully submitted,

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